

1 AN ACT
2 RELATING TO TAXATION; PROVIDING GROSS RECEIPTS AND
3 COMPENSATING TAX DEDUCTIONS FOR QUALIFIED GENERATING
4 FACILITIES; CLARIFYING THE MEANING OF TERMS FOR THE DEDUCTION
5 FROM GROSS RECEIPTS FOR RECEIPTS FOR SELLING SOLAR AND WIND
6 GENERATION EQUIPMENT TO GOVERNMENTS; MAKING AN APPROPRIATION.

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. A new section of the Gross Receipts and
10 Compensating Tax Act is enacted to read:

11 "ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND
12 COMPENSATING TAXES.--

13 A. Receipts from selling tangible personal
14 property or services that are eligible generation plant costs
15 to a person that holds an interest in a qualified generating
16 facility may be deducted from gross receipts if the holder of
17 the interest delivers an appropriate nontaxable transaction
18 certificate to the seller. The department shall issue
19 nontaxable transaction certificates to a person that holds an
20 interest in a qualified generating facility upon presentation
21 to the department of a certificate of eligibility obtained
22 from the department of environment pursuant to Subsection F
23 of this section for the deduction created in this section or
24 a certificate of eligibility pursuant to Section 7-2-18.25,
25 7-2A-25 or 7-9G-2 NMSA 1978. The deduction created in this

1 section may be referred to as the "advanced energy
2 deduction".

3 B. The value of eligible generation plant costs
4 from the sale of tangible personal property to a person that
5 holds an interest in a qualified generating facility for
6 which the department of environment has issued a certificate
7 of eligibility pursuant to Subsection F of this section may
8 be deducted in computing the compensating tax due.

9 C. The maximum tax benefit allowed for all
10 eligible generation plant costs from a qualified generating
11 facility shall be sixty million dollars (\$60,000,000) total
12 for eligible generation plant costs deducted or claimed
13 pursuant to this section or Section 7-2-18.25, 7-2A-25 or
14 7-9G-2 NMSA 1978.

15 D. Deductions taken pursuant to this section shall
16 be reported separately on a form approved by the department.
17 The nontaxable transaction certificates used to obtain
18 tax-deductible tangible personal property or services shall
19 display clearly a notice to the taxpayer that the deduction
20 shall be reported separately from any other deductions
21 claimed from gross receipts. A taxpayer deducting eligible
22 generation plant costs from the costs on which compensating
23 tax is imposed shall report those eligible generation plant
24 costs that are being deducted.

25 E. The deductions allowed for a qualified

1 generating facility pursuant to this section shall be
2 available for a ten-year period from the year development of
3 the qualified generating facility begins and expenditures are
4 made for which nontaxable transaction certificates authorized
5 pursuant to this section are submitted to sellers for
6 eligible generation plant costs or deductions from the costs
7 on which compensating tax are calculated are first taken for
8 eligible generation plant costs.

9 F. An entity that holds an interest in a qualified
10 generating facility may request a certificate of eligibility
11 from the department of environment to enable the requester to
12 obtain a nontaxable transaction certificate for the advanced
13 energy deduction. The department of environment shall:

14 (1) determine if the facility is a qualified
15 generating facility;

16 (2) require that the requester provide the
17 department of environment with the information necessary to
18 assess whether the requester's facility meets the criteria to
19 be a qualified generating facility;

20 (3) issue a certificate from sequentially
21 numbered certificates to the requester stating that the
22 facility is or is not a qualified generating facility within
23 one hundred eighty days after receiving all information
24 necessary to make a determination;

25 (4) issue:

1 (a) rules governing the procedures for
2 administering the provisions of this subsection; and

3 (b) a schedule of fees in which no fee
4 exceeds one hundred fifty thousand dollars (\$150,000);

5 (5) deposit fees collected pursuant to this
6 subsection in the state air quality permit fund created
7 pursuant to Section 74-2-15 NMSA 1978; and

8 (6) report annually to the appropriate
9 interim legislative committee information that will allow the
10 legislative committee to analyze the effectiveness of the
11 advanced energy deduction, including the identity of
12 qualified generating facilities, the energy production means
13 used, the amount of emissions identified in this section
14 reduced and removed by those qualified generating facilities
15 and whether any requests for certificates of eligibility
16 could not be approved due to program limits.

17 G. If the department of environment issues a
18 certificate of eligibility to a taxpayer stating that the
19 taxpayer holds an interest in a qualified generating facility
20 and the taxpayer does not sequester or control carbon dioxide
21 emissions to the extent required by this section by the later
22 of January 1, 2017 or eighteen months after the commercial
23 operation date of the qualified generating facility, the
24 taxpayer's certification as a qualified generating facility
25 shall be revoked by the department of environment and the

1 taxpayer shall repay to the state tax deductions granted
2 pursuant to this section; provided that if the taxpayer
3 demonstrates to the department of environment that the
4 taxpayer made every effort to sequester or control carbon
5 dioxide emissions to the extent feasible and the facility's
6 inability to meet the sequestration requirements of a
7 qualified generating facility was beyond the facility's
8 control, in which case the department of environment shall
9 determine, after a public hearing, the amount of tax
10 deduction that should be repaid to the state. The department
11 of environment, in its determination, shall consider the
12 environmental performance of the facility and the extent to
13 which the inability to meet the sequestration requirements of
14 a qualified generating facility was in the control of the
15 taxpayer. The repayment as determined by the department of
16 environment shall be paid within one hundred eighty days
17 following a final order by the department of environment.

18 H. The advanced energy deduction allowed pursuant
19 to this section shall not be claimed for the same qualified
20 expenses for which a taxpayer claims a credit pursuant to
21 Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction
22 pursuant to Section 7-9-54.3 NMSA 1978.

23 I. As used in this section:

24 (1) "coal-based electric generating
25 facility" means a new or repowered generating facility and an

1 associated coal gasification facility, if any, that uses coal
2 to generate electricity and that meets the following
3 specifications:

4 (a) emits the lesser of: 1) what is
5 achievable with the best available control technology; or
6 2) thirty-five thousandths pound per million British thermal
7 units of sulfur dioxide, twenty-five thousandths pound per
8 million British thermal units of oxides of nitrogen and one
9 hundredth pound per million British thermal units of total
10 particulate in the flue gas;

11 (b) removes the greater of: 1) what is
12 achievable with the best available control technology; or
13 2) ninety percent of the mercury from the input fuel;

14 (c) captures and sequesters or controls
15 carbon dioxide emissions so that by the later of January 1,
16 2017 or eighteen months after the commercial operation date
17 of the coal-based electric generating facility, no more than
18 one thousand one hundred pounds per megawatt-hour of carbon
19 dioxide is emitted into the atmosphere;

20 (d) all infrastructure required for
21 sequestration is in place by the later of January 1, 2017 or
22 eighteen months after the commercial operation date of the
23 coal-based electric generating facility;

24 (e) includes methods and procedures to
25 monitor the disposition of the carbon dioxide captured and

1 sequestered from the coal-based electric generating facility;
2 and

3 (f) does not exceed a name-plate
4 capacity of seven hundred net megawatts;

5 (2) "eligible generation plant costs" means
6 expenditures for the development and construction of a
7 qualified generating facility, including permitting; site
8 characterization and assessment; engineering; design; carbon
9 dioxide capture, treatment, compression, transportation and
10 sequestration; site and equipment acquisition; and fuel
11 supply development used directly and exclusively in a
12 qualified generating facility;

13 (3) "entity" means an individual, estate,
14 trust, receiver, cooperative association, club, corporation,
15 company, firm, partnership, limited liability company,
16 limited liability partnership, joint venture, syndicate or
17 other association or a gas, water or electric utility owned
18 or operated by a county or municipality;

19 (4) "geothermal electric generating
20 facility" means a facility with a name-plate capacity of one
21 megawatt or more that uses geothermal energy to generate
22 electricity, including a facility that captures and provides
23 geothermal energy to a preexisting electric generating
24 facility using other fuels in part;

25 (5) "interest in a qualified generating

1 facility" means title to a qualified generating facility; a
2 lessee's interest in a qualified generating facility; and a
3 county or municipality's interest in a qualified generating
4 facility when the county or municipality issues an industrial
5 revenue bond for construction of the qualified generating
6 facility;

7 (6) "name-plate capacity" means the maximum
8 rated output of the facility measured as alternating current
9 or the equivalent direct current measurement;

10 (7) "qualified generating facility" means a
11 facility that begins construction not later than December 31,
12 2015 and is:

13 (a) a solar thermal electric generating
14 facility that begins construction on or after July 1, 2010
15 and that may include an associated renewable energy storage
16 facility;

17 (b) a solar photovoltaic electric
18 generating facility that begins construction on or after July
19 1, 2010 and that may include an associated renewable energy
20 storage facility;

21 (c) a geothermal electric generating
22 facility that begins construction on or after July 1, 2010;

23 (d) a recycled energy project if that
24 facility begins construction on or after July 1, 2010; or

25 (e) a new or repowered coal-based

1 electric generating facility and an associated coal
2 gasification facility;

3 (8) "recycled energy" means energy produced
4 by a generation unit with a name-plate capacity of not more
5 than fifteen megawatts that converts the otherwise lost
6 energy from the exhaust stacks or pipes to electricity
7 without combustion of additional fossil fuel;

8 (9) "sequester" means to store, or
9 chemically convert, carbon dioxide in a manner that prevents
10 its release into the atmosphere and may include the use of
11 geologic formations and enhanced oil, coaled methane or
12 natural gas recovery techniques;

13 (10) "solar photovoltaic electric generating
14 facility" means an electric generating facility with a
15 name-plate capacity of one megawatt or more that uses solar
16 photovoltaic energy to generate electricity; and

17 (11) "solar thermal electric generating
18 facility" means an electric generating facility with a
19 name-plate capacity of one megawatt or more that uses solar
20 thermal energy to generate electricity, including a facility
21 that captures and provides solar thermal energy to a
22 preexisting electric generating facility using other fuels in
23 part."

24 Section 2. Section 7-9-54.3 NMSA 1978 (being Laws 2002,
25 Chapter 37, Section 8) is amended to read:

1 "7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND AND
2 SOLAR GENERATION EQUIPMENT--SALES TO GOVERNMENTS.--

3 A. Receipts from selling wind generation equipment
4 or solar generation equipment to a government for the purpose
5 of installing a wind or solar electric generation facility
6 may be deducted from gross receipts.

7 B. The deduction allowed pursuant to this section
8 shall not be claimed for receipts from an expenditure for
9 which a taxpayer claims a credit pursuant to Section
10 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

11 C. As used in this section:

12 (1) "government" means the United States or
13 the state or a governmental unit or a subdivision, agency,
14 department or instrumentality of the federal government or
15 the state;

16 (2) "related equipment" means transformers,
17 circuit breakers and switching and metering equipment used to
18 connect a wind or solar electric generation plant to the
19 electric grid;

20 (3) "solar generation equipment" means solar
21 thermal energy collection, concentration and heat transfer
22 and conversion equipment; solar tracking hardware and
23 software; photovoltaic panels and inverters; support
24 structures; turbines and associated electrical generating
25 equipment used to generate electricity from solar thermal

1 energy; and related equipment; and

2 (4) "wind generation equipment" means wind
3 generation turbines, blades, nacelles, rotors and supporting
4 structures used to generate electricity from wind and related
5 equipment."

6 Section 3. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2010. _____

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